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Claims 1-10 were rejected. Claims 1 and 5 have been amended. Claims 7 and 11-15 have been canceled. New claims 16-24 have been added. The amendments to the claims are being made merely to clarify the invention. All of the amendments are fully supported by the specification, claims, and figures as originally filed. No new matter is believed or intended to be involved.

In the Office Action dated 08/09/2007, claims 1-10 were rejected under 35 U.S.C. §103(a) as being obvious over Kuhle (U.S. 5,938,635) in view of Kohsai (U.S. 5,017,259).

Under MPEP 2143.03, in order to establish a *prima facie* case of obviousness, the prior art reference or combination of references must teach or suggest all of the limitations of a claim. A *prima facie* case of obviousness also requires that there be some teaching, suggestion, or motivation to modify the references either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art. MPEP 2143.01. The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. MPEP 2143.01. *Actual evidence* of a suggestion, teaching or motivation to combine prior art references must be shown. *In re Dembiczak*, 50 USPQ2d 1614 (Fed.Cir. 1999). Broad *conclusory statements*, standing alone, simply are *not evidence*. *Id.* Motivation to combine or modify will be lacking if a such a combination or modification would change the principle of operation of a prior art device. MPEP 2145. For at least the reasons set forth below, Applicant respectfully submits that the combined art of record fails to render present claims 1-10 obvious.

Applicant submits that the art of record fails to teach or suggest all of the limitations recited in each independent claim in accordance with MPEP 2143.03. For instance, Applicant notes that independent claim 1 recites a closed tip and a transverse tissue receiving port that is proximal to the closed tip and distal to the proximal needle segment, wherein the axis defined by a lumen segment passes through the closed tip.

10/808,077
END5294USNP

These limitations, among others recited in claim 1, are neither taught nor suggested by the combined art of record. Applicant therefore submits that the combined art of record fails to teach or suggest all of the limitations of claim 1 in accordance with MPEP 2143.03. Accordingly, Applicant respectfully submits that the combined art of record fails to render present claim 1 obvious in accordance with MPEP 2143, and respectfully requests that the rejection be withdrawn.

Even if all of the references in combination taught or suggested all of the limitations recited in the amended claims, the Office has failed to establish the motivation to modify or combine the teachings of the references as required by MPEP 2143, and has instead relied upon the subjective opinion of an individual examiner with no evidentiary support. Under the law of obviousness, *actual evidence* of a suggestion, teaching or motivation to combine prior art references must be shown. *In re Dembiczak*, 50 USPQ2d 1614 (Fed.Cir. 1999). Broad *conclusory statements* regarding the teaching of references, standing alone, simply *are not evidence*. *Id.* This falls far short of the requirements of MPEP 2143.01. *See In re Dembiczak*, 50 USPQ2d 1614 (Fed.Cir. 1999). Furthermore, closing the tip of the device of Kuhle would clearly change its principle of operation, such that there is no motivation to so modify Kuhle under MPEP 2145. Because the motivation required by MPEP 2143.01 is lacking, Applicant respectfully requests that the rejections be withdrawn.

Applicant further notes that the dependent claims include additional limitations not taught or suggested in the art of record, thus forming independent basis for non-obviousness.

Conclusion

While several distinctions have been noted over the art of record, Applicant notes that there are several other limitations recited in the present claims which are neither taught nor suggested by the art of record. Applicant expressly reserves all rights and arguments with respect to distinctions not explicitly noted herein. In addition, to the extent that the amendments constitute a narrowing of the claims, such narrowing of the claims should not be

10/808,077
END5294USNP

construed as an admission as to the merits of the prior rejections. Indeed, Applicant traverses the rejections and preserves all rights and arguments. To the extent that any particular statement or argument by the Office in the pending Office Action has not been explicitly addressed herein, the same should not be construed as an acquiescence or admission by the Applicant that such statements or arguments by the Office are accurate or proper.

Based on the foregoing, all pending claims are in a condition for allowance. Accordingly, Applicant respectfully requests reconsideration and an early notice of allowance.

Respectfully submitted,

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